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DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 121, 125 and 135****[Docket No. FAA-2001-10428; SFAR No. 89]****RIN 2120-AH46****Digital Flight Data Recorder Resolution Requirements****AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Final rule; Request for comments.

SUMMARY: This regulation allows operators of specified airplanes to operate those airplanes under part 121, part 125, or part 135 without meeting the resolution requirements for certain parameters of information recorded by flight data recorders. Shortly before the compliance date for the regulations, the FAA received information from airplane manufacturers that certain airplane models in service did not meet the resolution requirements. This regulation is needed to allow operators of these airplanes to continue operating these airplanes with their current recording capabilities until the FAA is able to determine the appropriate remedy for this problem.

DATES: Effective: August 17, 2001. Submit comments by September 21, 2001.

ADDRESSES: Address your comments to Docket Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590-0001. You must identify the docket number *FAA-2001-10428* at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. *FAA-2001-10428*." We will date-stamp the postcard and mail it back to you.

You also may submit comments electronically to the following Internet address: <http://dms.dot.gov>.

You may review the public docket containing comments to this regulation at the Department of Transportation (DOT) Dockets Office, located on the plaza level of the Nassif Building at the above address. You may review the public docket in person at the address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Also, you may review the public dockets on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: Gary E. Davis, Air Transportation Division,

AFS-200, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8166.

SUPPLEMENT INFORMATION:**Availability of Final Rules**

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>).

(2) On the search page type in the last five digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number for the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at <http://www.faa.gov/avr/arm/nprm.htm> or the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.htm.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information of SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: (9-AWA-SBREFA@faa.gov).

Background

In response to a series of recommendations issued by the National Transportation Safety Board (NTSB), the FAA revised and updated parts 121, 125, and 135 of Title 14, Code of Federal Regulations (14 CFR) in 1997 to require that flight data recorders (FDRs) on airplanes in the U.S. fleet be upgraded to record additional parameters of data. The exact number

of parameters required depends on the age of the airplane (62 FR 38362, July 17, 1997). Newly manufactured airplanes are required to be designed to record more parameters as well. Under that rulemaking action, the FAA prescribed a phased compliance schedule beginning in 1999. All upgrades must be completed by August 20, 2001. Airplanes manufactured after August 2000 must record 57 parameters of flight data at the time of manufacture.

As part of the revision to the FDR regulations, the FAA developed appendix M to part 121, which specifies the ranges, accuracies, sampling intervals, and resolution requirements for each parameter recorded. The standards of appendix M were based on the requirements of the former U.S. standard, appendix B to Part 121, and on the European Organization for Civil Aviation Equipment (EuroCAE) standards found in document ED-55. Appendix M reflects tightened range, accuracy, sampling interval, and resolution requirements to reflect the performance expected of newer technologies. Appendix E to part 125 and appendix F to part 135 are identical to appendix M to part 121, and address the same airplanes in the service of different operators. Our discussion of appendix M to part 121 in this preamble also applies to appendix E to part 125 and appendix F to part 135.

Actions Following the 1997 Rulemaking Airbus Industries

After we issued the revised digital flight data recorder (DFDR) regulations in 1997, the FAA received several communications from Airbus Industries (Airbus) indicating that in order to comply with the new DFDR recording requirements of appendix M, several of its airplane models would have to undergo major equipment retrofits, a circumstance that the rule explicitly tried to avoid. Airbus stated that although the DFDRs in its airplanes recorded the required parameters, some of the resolution and sampling intervals for certain parameters differed slightly from those required by appendix M. Airbus had noted these differences in its comment to the notice of proposed rulemaking, but the comment was not fully addressed in the preamble to the final rule.

After consulting with the NTSB, the FAA determined that changes to appendix M were an appropriate means to account for the differences in Airbus DFDR equipment. These changes were adopted in 1999 and 2000, before the requirements for those airplanes took effect, by adding footnotes to the

affected parameters in appendix M. The footnotes specify slightly different standards for certain parameters of specified Airbus airplanes.

The Boeing Company

On May 31, 2001, the Boeing Company (Boeing) filed a petition for exemption, indicating that three models of its airplanes did not meet the resolution requirements for some FDR parameters as required under appendix M, and would not meet them by the August 20, 2001, compliance date. Boeing requested that operators of its airplanes be allowed to continue operating without meeting the resolution requirements of appendix M. In the alternative, Boeing requested that appendix M be revised to reflect the resolution recording capabilities of the affected airplanes.

The FAA cannot issue an exemption from an operating rule to a manufacturer on behalf of the operators of its airplanes. Moreover, the issues raised in the Boeing petition are complex and their immediate resolution is not clear. More time is needed for the agency to make an informed decision on the various issues raised by the petition. We also need to gather the necessary technical and cost information that are part of any regulatory decision. Although several meetings have been held and further information gathered, the FAA has determined that it will not have sufficient information to make informed decisions and implement them before the August 20, 2001, compliance date.

Dassault Aviation

In memos dated June 25 and 27, 2001, Dassault Aviation (Dassault) informed the FAA that there were FDR resolution compliance difficulties on its model Falcon 900EX and model Mystere-Falcon 900 (with modification M1975 or M2695 installed) airplanes. These involve parameters for radio altitude and normal acceleration. Dassault states that as configured with its current flight data acquisition unit and bus assembly, it is unable to reach the resolution required by the rule. Dassault indicates that it would be a significant expense to develop the retrofit of a new data acquisition unit, and requests relief similar to that granted to Airbus. Like the Boeing request, the FAA has determined that it does not have the time to gather the information necessary to resolve this issue before the August 20, 2001, compliance date.

Current Action

Accordingly, the FAA is adopting this Special Federal Aviation Regulation (SFAR) to allow affected operators to continue to operate their airplanes without meeting the resolution requirements of appendix M for parameters listed for the individual aircraft models. These airplanes must continue to record the affected parameters to the resolution at which they are currently capable. In addition, airplane operators are required to report to the FAA the model and registration number of each affected airplane.

This regulation is effective for 2 years. The FAA intends to withdraw or modify this relief when it is able to make a determination on the manufacturers' requests to change the regulations. At this time, the FAA is unable to state what type of solution is expected for any of the problems described. It is possible that there may be a change to the regulations, that the affected airplanes will be required to meet the regulations, or a combination of both. The FAA will allow an appropriate amount of time to accomplish any modifications to these airplanes that may be required.

Operators of affected airplanes are cautioned that the relief provided by this regulation is extremely limited, and applies only to the resolution requirements for the particular parameters for those airplane models listed. No other relief from any other requirement of part 121 or appendix M is to be implied, and failure to comply with any other requirement is subject to normal enforcement action.

Immediate relief is provided to operators of models not specified in this SFAR, but use of the relief is subject to different requirements. An operator that discovers a resolution problem with an airplane model not specifically listed in this SFAR must immediately report the nature and scope of the problem discovered. The FAA will decide whether that relief may continue to be used, based on the information submitted. These operators are also required to submit the information required by paragraph 3.d. of this SFAR within 30 days of beginning use of the relief. Operators are cautioned that the FAA will not consider expanding this relief to cover, for example, airplanes that do not record one or more required parameters, operators that lack available parts for retrofit, or new airplanes that do not meet the flight data recorder requirements at the time of certification.

Effective Date and Good Cause for Immediate Adoption

Sections 553(b)(3)(B) and 553(d)(3) of the Administrative Procedure Act (APA) (5 U.S.C. Sections 553(b)(3)(B) and 553(d)(3)) authorize agencies to dispense with certain notice procedures and immediately adopt rules when they find "good cause" to do so. Under section 553(b)(3)(B), the requirements of notice and opportunity for comment do not apply when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Section 553(d)(3) allows an agency, upon finding good cause, to make a rule effective immediately, thereby avoiding the 30-day delayed effective date requirement in section 553.

The FAA finds that prior notice and public comment to this final rule are impracticable because the purpose of the rule is to temporarily suspend a requirement that takes effect very shortly. This relief is temporary pending further decisions by the FAA after more information is gathered. The FAA is requesting that any interested party submit comments concerning the issues involved so that it may make an informed decision concerning a permanent remedy for the issues. The agency also finds that it would be contrary to the public interest to delay this relief and ground the affected airplanes while a decision on recording resolution is pending.

Further, the FAA finds that good cause exists to make this regulation effective in less than 30 days. Relief is required no later than the compliance date, August 20, 2001, which is less than 30 days from issuance of this regulation.

The regulation is effective August 17, 2001. Use of this regulation requires further action by affected operators as described in the regulation.

Request for Comment

Although this regulation is being adopted without formal notice and comment because of the considerable time restraints, the FAA is interested in all comments regarding these issues from affected operators, parts suppliers, or other interested parties whose input would be valuable to the FAA in resolving the issues. Comments concerning the economic impact of possible solutions, such as changes to the regulations or the retrofit of the affected airplanes, are also requested.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically

excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion. The FAA has determined that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation. No changes in current operations of aircraft will result from the adoption of this rule.

Paperwork Reduction Act

This regulation requires operators of affected airplanes to inform the FAA of the registration number and model of those airplanes. This information is essential to the FAA's understanding of the scope of the problems and future determinations of the effect of any actions required to resolve the problems described.

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3507(j) and 5 CFR 1320.13), the Department of Transportation/Federal Aviation Administration requested an emergency clearance from the Office of Management and Budget (OMB) for the information collection activity associated with this SFAR. OMB approved the information collection activity on August 8, 2001, and assigned it OMB control number 2120-0669. A description of that information collection activity including the affected public and the estimated burden is summarized below.

The FAA was just recently made aware that between 400 and 600 airplanes would not meet the August 20, 2001, compliance date for FDR upgrades (14 CFR 121.344, et al.). This SFAR will provide temporary relief to the affected airplane operators, but in order to do so, the agency must know who the operators are, and which and how many airplanes are involved. It is estimated that approximately 50 operators will spend about 8 minutes per affected airplane to respond for an estimated one-time burden of 67 hours.

The FAA is required to inform the public that an agency may not conduct or sponsor, and that a person is not required to respond to, a request for collection without the approval of OMB. That approval was granted for this information collection, and the approval expires February 28, 2002.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards

and recommended practices and Joint Aviation Airworthiness Authorities regulations, where they exist, and has identified no differences in this amendment and the foreign regulations.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreement Act (19 U.S.C. section 2531-2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the FAA determined that this rulemaking: (1) Will not be a "significant regulatory action" as defined in Executive Order 12866 or as defined in DOT's Regulatory Policies and Procedure; (2) will not have a significant economic impact on a substantial number of small entities; (3) will have minimal effects on international trade; and (4) will not contain a significant intergovernmental or private sector mandate.

The FAA determined that this rule will provide regulatory relief, but only if expeditiously enacted before August 20, 2001. If it is not enacted, then approximately 700 U.S.-registered airplanes could be grounded. Because this rule provides significant regulatory relief, this economic summary constitutes the analysis and no regulatory evaluation will be placed in the docket.

This rule will temporarily permit specified airplanes to be operated under part 121, part 125, or part 135 without meeting certain requirements for FDR resolution specified in the applicable appendix. Operators of specified

airplane models will be able to continue operating those airplanes after August 20, 2001, with their current recording capabilities until the FAA is able to determine the appropriate remedy for the problems. In the absence of this action, about 700 airplanes could be grounded until the technical problems can be resolved. Because the solution of those technical problems is not known at this time, these airplanes could be grounded for a lengthy period of time. If these airplanes were to be taken out of service, U.S. scheduled air service would suffer extensive disruptions. Many flights would be canceled with no opportunity for passengers to reschedule. The potential economic losses would be considerable. As the FDR system itself has no direct effect on the safe operation of the individual airplane on which it is installed, allowing these airplanes to continue to operate while this issue is resolved will not reduce airplane safety. Further, these airplanes are recording some of the information required by the rule. On that basis, although the FAA cannot quantify the potentially substantial economic losses were the rule not issued, the FAA qualitatively determined that the rule is cost relieving.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that the action will have such an impact, the agency must prepare a Regulatory Flexibility Analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify, and an RFA is not required. The certification must include

a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this rule and determined that it will provide economic relief for several small airlines. In the absence of this rule, some small airlines would face significant economic hardship because they would face significant costs. On that basis, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the FAA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered to be unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the statute, the FAA assessed the potential effect of this final rule on international trade to be cost relieving and, therefore, determined that this rule will not result in a negative impact on international trade by companies doing business in or with the United States. This rule provides equivalent relief to those airplanes registered in the United States and operating under 14 CFR part 129. Under section 129.20, those airplanes are required to meet the requirements of airplanes operating under parts 121 or 125, depending on the status of the operator.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), (Pub. L. 104-4, March 22, 1995), is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The regulations herein will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Parts 121, 125, and 135

Aviation safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 121, 125, and 135 of Title 14, Code of Federal Regulations as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 41706, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

2. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44713, 44716-44717, 44722.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g) 41706, 44113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

4. In parts 121, 125, and 135, Special Federal Aviation Regulation No. 89 the text of which will appear at the beginning of part 121 is added to read as follows:

Special Federal Aviation Regulation No. 89—Suspension of Certain Flight Data Recorder Requirements

1. *Applicability.* This Special Federal Aviation Regulation provides relief to operators of the airplanes listed in paragraph 2 of this regulation. Relief under this regulation is limited to suspension of the resolution requirements only as listed in appendix M to part 121, appendix E to part 125, or appendix F to part 135, for the flight data recorder parameters noted for individual airplane models.

2. Airplanes Affected.

(a) Boeing model 717 airplanes—resolution requirement of appendix M to Part 121 or appendix E to part 125 for parameter number 5. Normal Acceleration (Vertical);

(b) Boeing model 757 airplanes—resolution requirements of appendix M to Part 121 or appendix E to part 125 for parameter number 12a. Pitch Control(s) position (non-fly-by-wire systems); number 14a. Yaw Control position(s) (non-fly-by-wire); number 19. Pitch Trim Surface Position; and number 23. Ground Spoiler Position or Speed Brake Selection.

(c) Boeing Model 767 airplanes—resolution requirements of appendix M to Part 121 or appendix E to part 125 for parameter number 12a. Pitch Control(s) position (non-fly-by-wire systems); number 14a. Yaw Control position(s) (non-fly-by-wire); number 16. Lateral Control Surface(s) Position (for inboard aileron(s) only); number 19. Pitch Trim Surface Position; and number 23. Ground Spoiler Position or Speed Brake Selection.

(d) Dassault Model Falcon 900 EX and Model Mystere-Falcon 900 (with modification M1975 or M2695 installed) airplanes—resolution requirements of appendix M to Part 121, appendix E to part 125 or appendix F to part 135 for parameter number 5. Normal Acceleration (Vertical); and number 26. Radio Altitude.

(e) Other airplanes for which notification under paragraph 3(b) of this regulation is made to the FAA regarding flight data recorder resolution requirement noncompliance.

3. Requirements for use.

(a) An operator of an airplane described in paragraphs 2(a) through 2(d) of this regulation may make immediate use of the relief granted by this SFAR.

(b) An operator seeking relief for another airplane model under paragraph 2(e) of this SFAR must notify the FAA immediately in writing as to the nature and extent of the resolution problem found, and must comply with all other requirements of this SFAR, including the report required in paragraph 3(d) of this SFAR. Operators may make immediate use of this relief, but relief may be withdrawn by the FAA after a review of the information filed. Additional information may be required.

(c) An operator of an affected airplane must continue to record all affected parameters to the maximum resolution possible using the installed equipment; that equipment must be maintained in proper working order.

(d) An operator of an affected airplane must, within 30 days of using the relief granted by this regulation, report the following information:

(1) The operator's name and address, and the name and phone number of a contact person for the information reported;

(2) The model and registration number of each affected airplane;

(3) For each affected airplane, the parameter(s) for which resolution relief is being used, and the actual resolution being recorded;

(4) Any additional information requested by the FAA.

(e) Reports must be filed with the FAA Flight Standards Service, Denise Cashmere, Administrative Officer, AFS-200, 800 Independence Ave., SW., Washington, DC 20591. Additionally, each operator must file a copy of the report with its Principal Avionics Inspector or Principal Operations Inspector, as appropriate.

4. *Expiration.* This Special Federal Aviation Regulation expires on August 18, 2003.

Issued in Washington, DC, on August 17, 2001.

Jane F. Garvey,
Administrator.

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